

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ABDULLAH Y. SALAHUDDIN,

Plaintiff,

02 Civ. 5253 (CLB) (MDF)

- against-

GLENN S. GOORD, Commissioner, et al.,

Memorandum and Order

Defendants.

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Brieant, J.

Before the Court for consideration is the most recent Report and Recommendation filed April 4, 2008 of the Hon. Mark D. Fox, United States Magistrate Judge, in this long pending case, and Mr. Salahuddin's Objections dated April 10, 2008.

Judge Fox points out that the only open issue for resolution is that Plaintiff seeks reconsideration of a prior Report and Recommendation filed March 15, 2004 which recommended dismissal on Summary Judgment of a due process claim on a Prison Tier III Disciplinary Hearing. The prior Recommendation was founded on the fact that Plaintiff had obtained Article 78 Review in the New York State Court which was denied by the Appellate Division. This Court held that Plaintiff had received a full and fair opportunity to litigate the matter in the State Courts and that the claim was now precluded by judgment. Plaintiff now has "newly discovered evidence," improvidently relied on to assess the reliability of a confidential informant, which Plaintiff did not have or know about at the time of the New York State Court decision. While Plaintiff understandably rejects the motion that he could have "waived a right he

never knew existed" (letter dated April 10, 2008). The unavoidable fact is that the existence of the document was known to some extent in 2004 because it was reviewed *in camera* by the Court, which determined that it did not need to be disclosed. Later, Defendants voluntarily released the document.

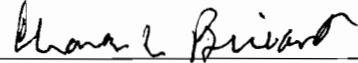
This Court agrees with the learned Magistrate Judge that it is simply too late to reopen this issue for possible relitigation leading to a result contrary to the prior state court adjudication.

Accordingly, the Objections are disapproved and the Report and Recommendation of the Magistrate Judge issued April 4, 2008 is hereby adopted as the decision and order of this Court.

This Court also agrees with the Magistrate Judge that this case has been too long pending unresolved, and requires a trial of the surviving issues. This Court also agrees that a renewed effort to obtain *pro bono* counsel for Plaintiff might be desirable, and a Consent to Trial should be requested, if possible. Consideration might be given to a change of venue to the Northern District if it would make consent more easily available and be more convenient for the parties and witnesses.

SO ORDERED.

Dated: White Plains, New York
April 25, 2008



Charles L. Brieant, U.S.D.J.